

MAR 18 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)	CC Docket No. 94-11
)	
TELEPHONE AND DATA)	File No. 10209-CL-P-715-B-88
SYSTEMS, INC.)	
)	
For facilities in the Domestic)	
Public Cellular Telecommunications)	
Radio Service on Frequency Block)	
B, in Market 715, Wisconsin 8)	
(Vernon), Rural Service Area)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

PETITION OF SJI, INC. FOR LEAVE TO INTERVENE

Pursuant to Section 1.223 of the Commission's Rules, 47 C.F.R. § 1.223, SJI, Inc. ("SJI"), by its attorneys, hereby petitions for leave to intervene in the above-captioned proceeding. The Commission has designated the above-referenced application for hearing^{1/} to examine the conduct of a Telephone and Data Systems, Inc. ("TDS") subsidiary, United States Cellular Corporation ("USCC") in a prior proceeding, La Star Cellular Telephone Company.^{2/} La Star Cellular Telephone Company ("La Star") is a joint venture of an SJI subsidiary and a subsidiary of USCC, which filed an application to provide wireline cellular service to St. Tammany Parish in the New Orleans, Louisiana

^{1/} Memorandum Opinion and Order and Hearing Designation Order, Telephone and Data Systems, Inc., FCC No. 94-29 (released February 1, 1994) ("HDO").

^{2/} 6 FCC Rcd. 6860 (Initial Decision 1991), aff'd, 7 FCC Rcd. 3762 (1992), appeal pending sub nom., Telephone and Data Systems, Inc. v. FCC, Case no. 92-1273 (D.C. Cir.).

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metropolitan statistical area. SJI owns a 51 percent interest in La Star.

The HDO authorizes the presiding Administrative Law Judge to "examine all of USCC's conduct during the La Star proceeding . . ." HDO at ¶ 35. A significant portion of the testimony discussed in the HDO, and other aspects of USCC's conduct and testimony in the La Star proceeding, relate to USCC's interactions with SJI in the control of La Star. Since SJI's qualifications may also be questioned in subsequent proceedings involving SJI, based in part on these common factual issues, SJI should be permitted leave to intervene to protect its interests. Moreover, SJI's knowledge of and access to important underlying facts will permit SJI to "assist the Commission in the determination of the issues in question . . ." 47 C.F.R. § 1223(b).

I. SJI SHOULD BE GRANTED LEAVE TO INTERVENE IN ORDER TO PROTECT ITS OWN INTERESTS AND TO ASSIST THE COMMISSION IN DETERMINATION OF THE ISSUES IN THIS PROCEEDING

These proceedings are a direct outgrowth of the La Star proceeding. The critical threshold issue in La Star was whether SJI, the eligible wireline carrier, or USCC, an ineligible party, controlled La Star. The ALJ and the Commission found that USCC controlled La Star, notwithstanding contrary statements of both SJI and USCC. In affirming the initial decision of the Administrative Law Judge finding that La Star was thus ineligible to provide wireline cellular service, the Commission left open

questions whether USCC or SJI lacked candor in their statements on the control issues for future proceedings.^{3/} In the HDO in this proceeding, the Commission has now designated a broad issue with respect to USCC's conduct in the La Star proceeding.

SJI witnesses testified extensively in the La Star proceeding. Significant portions of the testimony identified in both decisions in the La Star proceeding, as well as the testimony discussed in the Hearing Designation Order, involved descriptions of underlying facts with respect to interactions between USCC, SJI, and the various agents of La Star involved in prosecuting La Star's applications. See HDO at ¶¶ 12-26. It also appears likely, based on informal discussions with the FCC's staff, that the same SJI principals and employees who testified in the La Star proceeding will be called to testify in this proceeding.

While the ultimate issue in this proceeding is whether USCC lacked candor or misrepresented facts with respect to its

^{3/} La Star Reconsideration Order, 7 FCC Rcd. at 3767, n. 3. The Commission observed:

Because our conclusion [on the control issue] . . . results in the dismissal of La Star's application, we do not reach the question raised in NOCGSA's exceptions of whether La Star's principals lacked candor in their hearing testimony concerning the control of La Star. NOCGSA's exceptions and La Star's motion to strike those exceptions will be dismissed as moot. Questions regarding the conduct of SJI and USCC in this case may be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance.

Id.

interactions with SJI and the control of La Star, it appears likely that determinations or findings as to the underlying facts with respect to the nature of these interactions will be made in this proceeding, in order to reach this ultimate question. This is all the more likely in light of the broad scope of inquiry which the presiding ALJ is authorized to pursue under the HDO. See discussion supra; HDO at ¶ 35.

As indicated above, the Commission has indicated that parties in future proceedings involving SJI may raise issues as to SJI's own conduct in the La Star proceeding. Parties to any such subsequent proceedings will likely attempt to utilize factual findings in this proceeding in any such future proceedings. In fact, SJI's own qualifications have already been attacked, based upon its conduct in the La Star proceeding, in proceedings with respect to two Louisiana Rural Service Areas in which an SJI subsidiary has been granted licenses to provide cellular service. In re Applications of MobileTel, Inc., No. 10538-CL-P-461-B-89, No. 10539-CL-P-462-B-89, Supplement to Petition for Reconsideration of Columbia Cellular, Inc. (filed July 16, 1992); Supplement to Petition for Reconsideration of BellSouth Mobility Inc. (filed July 15, 1992).^{4/}


SJI should thus be granted leave to intervene in order to protect its interests in ensuring that the Commission properly and correctly resolves underlying factual issues which might be

^{4/} SJI has been informed that BellSouth Mobility plans to file, or has filed, a motion to dismiss its Petition for Reconsideration, and related Supplement, with prejudice.

raised in any future consideration of SJI's qualifications. Cf.
Midwest Radio-Television, Inc., 16 RR 2d 833, 835-837 (A.L.J.
1969) (permitting minority shareholder to intervene where
allegations raised issues as to minority shareholder's own
conduct in order to protect own interests). Moreover, given
SJI's role in the factual circumstances which give rise to the
issues in this proceeding, SJI's participation as a party will
assist the Commission in the determination of the issues in
question.

For the foregoing reasons, SJI's petition for leave to
intervene should be granted.

Respectfully submitted,



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March 18, 1994

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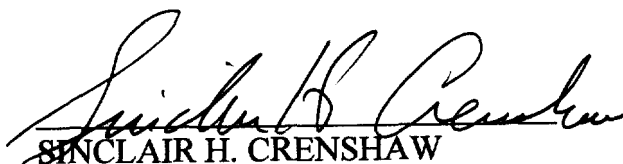
DECLARATION

I, Sinclair H. Crenshaw, do hereby declare as follows:

1. I am vice-president of SJI, Inc.
2. I have read the foregoing Petition of SJI, Inc. for Leave to Intervene. With respect to the statements made in the Petition, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

March 17, 1994
Date


SINCLAIR H. CRENSHAW

CERTIFICATE OF SERVICE

I, James A. Kirkland, hereby certify that on this 8th day of March, 1994, I have caused copies of the foregoing Petition of SJI Cellular, Inc. for Leave to Intervene to be sent to the following by first class mail, postage prepaid.

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